

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN ASSEMBLY AUGUST 31, 2005

AMENDED IN ASSEMBLY JULY 13, 2005

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 13, 2005

## **SENATE BILL**

**No. 426**

---

### **Introduced by Senator Simitian**

(Principal coauthor: Assembly Member Pavley)

February 17, 2005

---

An act to add Chapter 6.6 (commencing with Section 25570) to Division 15 of the Public Resources Code, relating to energy.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 426, as amended, Simitian. State Energy Resources Conservation and Development Commission: liquefied natural gas terminals.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission and requires the commission to prepare a biennial integrated energy policy report. The act requires the commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act grants the commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal

energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.

This bill would enact the Liquefied Natural Gas Terminal Evaluation Act ~~which~~ *that* would require the commission to evaluate and rank every proposed liquefied natural gas (LNG) terminal pursuant to the act. The bill would require that the evaluation be commenced by January 1, ~~2006~~ 2007, include an evaluation of all applications received by and deemed sufficiently complete by the lead agency for the purposes of the commission's evaluation <sup>44</sup> before that date, and ~~report the results of that evaluation to the Governor and the Legislature by April 1, 2006.~~ *be completed by April 1, 2007. The bill would require the report of the results of that evaluation be submitted to the Governor and the Legislature by May 1, 2007.* The bill would require the commission to evaluate any LNG terminal application received and deemed sufficiently complete ~~on or~~ after January 1, ~~2006~~ 2007, by the lead agency for purposes of the commission's evaluation, within 90 days from the date the application is deemed sufficiently complete, and to report the results of that evaluation to the Governor and the Legislature immediately thereafter. The bill would require the energy commission to hold public hearings to consider the results of the LNG evaluation terminal ranking to provide an opportunity for public comment. All costs of the commission for the implementation of these requirements, including costs for any temporary personnel or consultants, would be funded from fees charged to persons or entities proposing an LNG terminal that is evaluated and ranked pursuant to the act. The bill would require the commission to evaluate and rank a site for which an application for an LNG terminal has been filed, based upon certain criteria and in consultation with specified entities. The bill would require the Governor to disapprove an application for a license to construct and operate an LNG terminal unless the proposed facility is evaluated and ranked, as specified, and the ~~site~~ *proposal* is one of the two highest ranked sites pursuant to the act, and the Governor determines that among the available feasible technologies the technology chosen for a particular site will minimize adverse public health, safety, and environmental impacts. The bill would provide that these requirements are applicable to every LNG terminal to be constructed or operating in California, irrespective of whether an application has been submitted for the construction or operation of the terminal to any federal, state, or local entity prior to the operative date of the bill. The bill would require the State Lands Commission, or a

legislatively designated grantee, to evaluate and consider any application for a permit to construct and operate LNG facilities on state tide or submerged lands within its jurisdiction pursuant to the requirements of this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the  
2 following:
- 3 (a) It is the policy of the state to meet California's energy  
4 growth by optimizing energy conservation and resource  
5 efficiency and by reducing per capita demand to ensure a clean,  
6 safe, and reliable supply of energy for California.
- 7 (b) It is the policy of the state to be sensitive to the impact of  
8 the state's energy policy on global climate change and  
9 environmental impacts in host countries that export natural gas.
- 10 (c) It is the policy of the state to accelerate the use of  
11 renewable energy resources wherever feasible and to ensure a  
12 diverse and affordable portfolio of fuel sources to minimize the  
13 opportunity for supply interruptions.
- 14 (d) The state has a role in decisions regarding the siting and  
15 design of new onshore and offshore infrastructure for the  
16 importation of liquefied natural gas that results in impacts to  
17 public health, safety, and the environment.
- 18 (e) Laws and regulations enacted by the state to address  
19 consumer, community, public health, safety, and environmental  
20 impacts of new onshore and offshore imported liquefied natural  
21 gas infrastructure, where more protective, should not be  
22 preempted by weaker, less protective federal laws and  
23 regulations.
- 24 (f) Decisions regarding the importation of liquefied natural gas  
25 should be based on a comprehensive review of current and  
26 projected natural gas supply and demand in California, and  
27 alternative sources of supply.
- 28 (g) Construction and operation of liquefied natural gas onshore  
29 and offshore infrastructure may commence after completion of a  
30 rigorous evaluation that analyzes the need for liquefied natural  
31 gas and the relative merits of pending and future proposals with

1 respect to business, consumer, community, public health, safety,  
2 and environmental impacts.

3 (h) Based upon the Tenth Amendment to the United States  
4 Constitution, federal law neither abrogates a state's property  
5 rights within its tide and submerged lands nor provides the power  
6 of eminent domain to the Federal Energy Regulatory  
7 Commission with respect to the siting liquefied natural gas  
8 facilities.

9 (i) Nothing in this bill shall be construed as an absolute  
10 prohibition on the construction of LNG facilities on or off the  
11 California coast. It is the intent of the State of California to  
12 facilitate a comprehensive and efficient review of applications  
13 for liquefied natural gas terminals and their related infrastructure  
14 in the state.

15 SEC. 2. Chapter 6.6 (commencing with Section 25570) is  
16 added to Division 15 of the Public Resources Code, to read:

17  
18 CHAPTER 6.6. LIQUEFIED NATURAL GAS TERMINAL  
19 EVALUATION ACT

20  
21 Article 1. General Provisions

22  
23 25570. This chapter shall be known and may be cited as the  
24 Liquefied Natural Gas Terminal Evaluation Act.

25 25570.1. For purposes of this chapter, the following  
26 definitions apply:

27 (a) "Feasible" means capable of being accomplished in a  
28 successful manner within a reasonable period of time, taking into  
29 account all of the following:

30 (1) Economic, environmental, social, technological, safety,  
31 and reliability factors.

32 (2) Gas supply and demand forecasts.

33 (3) Alternative sources of natural gas.

34 (b) "Liquefied natural gas" or "LNG" means natural gas  
35 cooled to minus 259 degrees Fahrenheit so that it forms a liquid  
36 at approximately atmospheric pressure.

37 (c) "Liquefied natural gas terminal," "terminal," or "LNG  
38 terminal," means facilities designed to receive liquefied natural  
39 gas from oceangoing vessels, including those facilities required  
40 for storage and regasification of the liquefied natural gas and

1 those pipelines and facilities necessary for the transmission of the  
2 regasified natural gas to the point of interconnection with  
3 existing pipelines.

4 (d) “Person” means an individual, organization, partnership, or  
5 other business association or corporation, the federal  
6 government, the state government, any local government, and  
7 any agency or instrumentality of any of those entities.

8  
9 Article 2. Evaluation of Potential Liquefied Natural Gas  
10 Terminals and Alternatives  
11

12 25571. In furtherance of and in conformance with the federal  
13 Deepwater Port Act of 1974 (33 U.S.C. Sec. 1501 et seq.), as  
14 amended, the Governor shall disapprove an application for a  
15 license to construct and operate a liquefied natural gas terminal  
16 unless:

17 (a) The proposed facility is evaluated and its site ranked  
18 pursuant to this article.

19 (b) The site is one of the two highest ranked sites pursuant to  
20 this article.

21 (c) The Governor determines, based on all filings and  
22 pleadings, that among the available feasible technologies for  
23 transporting and delivering natural gas through a liquefied  
24 natural gas process, the technology chosen for a particular site  
25 will minimize adverse public health, safety, and environmental  
26 impacts.

27 25571.2. (a) The commission shall evaluate and rank every  
28 proposed LNG terminal pursuant to this article. The evaluation  
29 shall meet all of the following requirements:

30 (1) Be commenced by January 1, ~~2006~~ 2007.

31 (2) Include an evaluation of all applications received by and  
32 deemed sufficiently complete by the lead agency for purposes of  
33 the commission’s evaluation before January 1, ~~2006~~ 2007.

34 (3) Be completed and the results reported to the Governor and  
35 the Legislature by April 1, ~~2006~~ 2007. *Notwithstanding Section*  
36 *7550.5 of the Government Code, the report shall be submitted to*  
37 *the Governor and the Legislature by May 1, 2007.*

38 (b) The commission shall evaluate any LNG terminal  
39 application that is received and deemed sufficiently complete by  
40 the lead agency for purposes of the commission’s evaluation ~~on~~

1 or after January 1, ~~2006~~ 2007, within 90 days from the date the  
2 application is deemed sufficiently complete, and shall report the  
3 results of that evaluation to the Governor and the Legislature  
4 immediately thereafter. Any evaluation completed prior to  
5 December 31, ~~2006~~ 2007, shall include an update of the ranking  
6 completed and reported pursuant to subdivision (a).

7 (c) All documents prepared prior to January 1, ~~2006~~ 2007, and  
8 all evaluations commenced prior to January 1, ~~2006~~ 2007, and  
9 certified as complete by April 1, ~~2006~~ 2007, shall be sufficient  
10 for purposes of this article. Those documents include draft and  
11 final environmental impact reports and statements prepared  
12 pursuant to the National Environmental Policy Act of 1969 (42  
13 U.S.C. Sec. 4321 et seq.) and the California Environmental  
14 Quality Act (Division 13 (commencing with Section 21000)).

15 (d) The commission shall evaluate and rank each project by  
16 using the documents provided by the applicant to comply with  
17 the requirements of the federal Deepwater Port Act of 1974 (33  
18 U.S.C. Sec. 1501 et seq.), as amended, and the Federal Energy  
19 Regulatory Commission's licensing authority. Nothing in this  
20 section authorizes the commission to request confidential  
21 financial or market information from any applicant for purposes  
22 of the commission's evaluation.

23 (e) The commission shall hold at least two public hearings to  
24 consider the results of the LNG terminal evaluation and ranking  
25 in order to provide an opportunity for public comment. At least  
26 one public hearing shall be held in any county that includes a site  
27 that has been evaluated. If the terminal is not proposed to be  
28 located within a city or county, the hearings shall be in the city or  
29 county nearest the proposed location.

30 (f) All costs incurred by the commission for the  
31 implementation of this article, including costs for any temporary  
32 personnel or consultants, shall be funded by fees charged to  
33 persons or entities proposing an LNG terminal that is evaluated  
34 and ranked pursuant to this article.

35 25571.4. (a) An evaluation and ranking of a facility shall be  
36 based on the following criteria:

37 (1) The extent to which the facility is necessary to meet the  
38 future energy needs of California.

39 (2) The extent to which environmentally less damaging  
40 alternatives are feasible to meet California's future energy needs.

1 (3) The extent to which a no-build alternative is or is not  
2 economically feasible for California's economy.

3 (4) The extent to which the facility affects the environment,  
4 public health, safety, and welfare, including any disproportionate  
5 negative effects upon low-income or disadvantaged communities.

6 (5) The extent to which the facility, including supporting  
7 infrastructure and resulting ship and air traffic, could impact  
8 national security, along with any cumulative impacts upon  
9 national security that could result from multiple facilities.  
10 Potential impacts on national security include any effect that the  
11 facility may have on the land, sea, and airspace identified by the  
12 Department of Defense, any of its component armed services, or  
13 the United States Coast Guard, for conducting operations, for  
14 conducting training, or for the development and testing of  
15 weapons, sensors, and tactics.

16 (6) The economic merits of the respective proposals,  
17 including, but not limited to, the reliability and sustainability of  
18 the proposed supply.

19 (b) In conducting the evaluation and ranking, the commission  
20 shall consult with all entities of local government that would be  
21 affected by a proposed liquefied natural gas terminal, the  
22 California Coastal Commission, the State Lands Commission, the  
23 Public Utilities Commission, the Office of Emergency Services,  
24 the Department of Fish and Game, the State Water Resources  
25 Control Board, the affected California regional water quality  
26 control board, the State Air Resources Board, the Federal Energy  
27 Regulatory Commission, the Department of Defense and its  
28 component armed services, and the United States Coast Guard.

29 25571.8. (a) This article does not limit any existing authority  
30 of state government pursuant to Division 13 (commencing with  
31 Section 21000).

32 (b) The requirements of this article are applicable to every  
33 LNG terminal to be constructed or operating in California,  
34 irrespective of whether an application has been submitted for the  
35 construction or operation of the terminal to any federal, state, or  
36 local entity prior to the operative date of this article.

1       Article 3. Evaluation of Potential Liquefied Natural Gas  
2               Facilities on State Tide and Submerged Lands  
3  
4       25572. The State Lands Commission, or a legislatively  
5 designated grantee, shall evaluate and consider applications for a  
6 permit to construct and operate liquefied natural gas facilities on  
7 state tide or submerged lands within its jurisdiction pursuant to  
8 Article 2 (commencing with 25571).

O